

APPEAL NO. 031390  
FILED JULY 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 30, 2003. With respect to the disputed issue before him, the hearing officer determined that the respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second compensable quarter. Additionally, the hearing officer determined that the appellant/cross-respondent (carrier) did not waive its right to dispute the claimant's SIBs entitlement by failing to comply with the provision of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(a) (Rule 130.108(a)). On appeal, the carrier contends that the hearing officer should not have addressed the issue concerning Rule 130.108(a), as the only issue presented for resolution was SIBs entitlement. The claimant also appeals the determination relating to Rule 130.108(a), contending that since the hearing officer found that the carrier failed to comply with the provisions of Rule 130.108(a) the carrier has waived the right to dispute SIBs entitlement and, consequently, the claimant should be entitled to second quarter SIBs. The carrier responded to the claimant's appeal, arguing that even if the hearing officer properly considered the issue involving Rule 130.108, failure to comply with the rule does not result in a waiver of the right to contest SIBs entitlement. The claimant filed another version of her appeal on July 2, 2003, disputing the hearing officer's determination that she did not make a good faith effort to find employment during the qualifying period corresponding to the second SIBs quarter.

DECISION

Affirmed.

Records of the Texas Workers' Compensation Commission reflect that the hearing officer's decision was mailed to the claimant on May 14, 2003. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code, of the date of receipt of the hearing officer's decision. Applying Rule 102.5(d) and Section 410.202, the claimant was deemed to have received the hearing officer's decision on May 19, 2003, and the deadline for the claimant to file an appeal was June 10, 2003. The second version of the claimant's appeal reflects that it was faxed on July 2, 2003, and was, therefore, not timely filed and will not be considered. The first version of the claimant's appeal was timely filed and will be given consideration.

The hearing officer did not commit reversible error in deciding whether or not the carrier failed to comply with the requirements of Rule 130.108(a) and, if so, whether the carrier waived the right to contest SIBs entitlement for the second quarter. Although this issue was not presented to the hearing officer as a disputed issue for resolution, neither party is aggrieved by the determinations relating to it. The hearing officer determined

that, separate and apart from the waiver issue, the claimant did not establish that she is entitled to SIBs for the second quarter and, as previously explained, that issue was not timely appealed, and has therefore become final pursuant to Section 410.169. The carrier is not aggrieved by the complained-of determination. Furthermore, as noted in Texas Workers' Compensation Commission Appeal No. 021366, decided July 1, 2002, any failure on a carrier's part to comply with the provision of Rule 130.108(a) would involve a matter for the Division of Compliance and Practices. As such, the claimant is not aggrieved by the complained-of determination because any failure on the part of the carrier to comply with the rule would not create a waiver resulting in a determination of SIBs entitlement.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
ACE USA  
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge